SUPREME COURT, U. S.
FILED
MAR 20 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

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NO. 79-1487

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SHANNON T. ASHWORTH,

Petitioner

v.

STATE OF ALABAMA,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

* * * * * * * * * * * *

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STATE OF ALABAMA,
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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

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Petitioner, Shannon T. Ashworth, prays that a writ of certiorari issue to review the judgment of the Court of Criminal Appeals of the State of Alabama entered upon September 4, 1979, affirming his conviction for murder in the second degree as charged in the indictment, and that on hearing the judgment of conviction be reversed.

OPINION BELOW

The opinion of the Alabama Court of Criminal Appeals has not been reported.

JURISDICTION

The judgment of the Court of Criminal Appeals was entered on September 4, 1979. A timely application for rehearing was filed and was overruled on October 16, 1979. A writ of certiorari to the Alabama Supreme Court was also timely filed and overruled on December 21, 1979.

This Court has jurisdiction under 28 U.S.C., Paragraph 1257 (c).

QUESTIONS PRESENTED

Whether the trial court's definition of malice as an essential ingredient of murder was couched in such a way as to require the jury to presume the element to be present and thus deny to the petitioner his Federal constitutional right to be presumed innocent of each essential averment against him.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth and Fourteenth Amendment to the United States Constitution and in particular the due process clause of the latter.

STATEMENT OF THE CASE

The defendant in this case was charged with murder in the Jefferson County Circuit Court of Alabama, found guilty of murder in the second degree for a "malicious" homicide and sentenced to twenty years imprisonment on January 11, 1978 for the alleged beating death of one Thelma Gray on or about September 17, 1976.

According to the above allegations the defendant was charged as a principal with the first degree common law murder of Ms. Gray, but convicted of second degree murder which was properly included in the same indictment and thus sentenced to twenty years custody in a state penitentiary.

The conviction was appealed to the Court of Criminal Appeals and affirmed on September 4, 1979. This opinion has not been reported but because the appellate court did not correct the trial courts charge to the jury that "malice" as an ingredient of the offense charged is defined as an unlawful act willfully done, hence this case.

REASONS FOR GRANTING THE WRIT

It is clearly the intention of the United States Constitution as it has been interpreted by this court and the various state courts to proscribe the conviction of any person on a criminal charge, unless he is given the full benefit of being presumed innocent of each material element of every charge against him.

All previous Alabama appellate decisions have uniformly held that malice can be presumed from the doing of an unlawful act wilfully if and only if there is an absence of any legal justification, excuse or extenuation. Otherwise, the intent defined is perfectly compatible with manslaughter. See Redden v. State, 7 Ala.App. 33, 60 So. 992 (1913); Patterson v. State, 156 Ala. 62, 47 So. 52; and Grubbs v. State, 86 Ala. 613, 6 So. 109.

In the case presented here, not only was the previous Alabama rule (grounded in constitutional necessity) not charged, it was disregarded.

As this court is aware, charges by state trial courts in which elements of crimes, are presumed such as intent to steal from recent possession of stolen property, have been universally condemned by all Federal circuits and considered by this very court on the question of whether or not the trial meets the fundamental requirement of constitutional fairness because of the erroneous instruction.

In the instant case, the petitioner, in legal effect, had the trial jury improperly told that the element of malice was present regardless of extant circumstances or extenuation or possible justification and this charge denied to him in violation of the United States

Constitution a fundamental right which had been accorded every other criminal defendant in Alabama since its jurisprudence began and to which our Federal system entitles him.

The true test is whether the act is unlawfully and wilfully done without any legal justification or extenuation. This appellant was denied that test wrongfully and sentenced to twenty years.

CONCLUSION

The Petition for a writ of Certiorari should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served this day on the Honorable Charles A. Graddick, Attorney General, by mailing a copy by certified mail to his office at 250 Administration Building, Montgomery, Alabama, 36130.

DATED this the 20th day of March, 1980.

/s/Arthur J. Hanes
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/s/J. Louis Wilkinson
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Birmingham, Alabama 35203

Attorneys for Petitioner

APPENDIX A

Shannon T. ASHWORTH

v.

STATE.

6 Div. 725

Court of Criminal Appeals of Alabama.

September 4, 1979

Rehearing Denied October 16, 1979

AFFIRMED.

No opinion.

APPENDIX B

Ex Parte Shannon T. ASHWORTH.

(Re Shannon T. Ashworth

v.

State of Alabama).

79-70

Supreme Court of Alabama.

December 21, 1979

Certiorari to the Court of Criminal Appeals.

EMBRY, Justice

Writ Denied.

TORBERT, C.J., BLOODWORTH, FAULKNER and ALMON, JJ., concur.

APPENDIX C

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.